

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM  
MOTORS, INC., and MATTINGLY AUTO  
SALES, INC.,

Plaintiffs,

v.

NEXTGEAR CAPITAL, INC. F/K/A DEALER  
SERVICES CORPORATION, successor by  
merger with Manheim Automotive Financial  
Services, Inc.,

Defendants.

Case No. 1:14-cv-01589-TWP-DML

**JOINT MOTION TO CONTINUE TRIAL AND PRE-TRIAL DEADLINES**

The parties respectfully and jointly request that the Court continue the February 7, 2018 Final Pretrial Conference setting, the March 5, 2018 bench trial date, and all associated final pre-trial deadlines in this matter. In support of this motion, the parties show as follows:

1. On June 29, 2017, this Court granted in part Plaintiffs' motion for class certification and certified a class. Dkt. 220. On January 12, 2018, this Court decertified the class and entered orders on the Plaintiffs' and Defendants' motions for summary judgment. Dkt. 261 & 262.

2. This matter is currently set for trial beginning on March 5, 2018; the Final Pretrial Conference is set for February 7, 2018; and the parties' substantial pretrial deadlines are on January 24, 2018 and January 31, 2018.

3. Plaintiffs intend to file a Rule 23(f) petition with the Seventh Circuit seeking review of this Court's decertification order prior to Friday, January 26, 2018 (within the 14-day time period set forth in Rule 23(f)).

4. Plaintiffs contend that if the parties are required to try this case to verdict before the Seventh Circuit completes its review of the decertification order, a ruling on the merits by this Court could inadvertently trigger the one-way intervention rule if the Seventh Circuit later reverses the decertification order. As this Court previously noted in staying any ruling on Plaintiffs' motion for partial summary judgment, ruling on the merits on Plaintiffs' contract claim before class notice is provided and the opt-out period has run would create a one-way intervention problem. Dkt. 238 at 2 (citing *Perlitz v. Liberty Loan Corp.*, 523 F.3d 349, 354-55 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 2289, 198 L.Ed. 723 (2017)). *See also Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1057 (7th Cir. 2016), *cert. denied*, 810 F.3d 1045, 1057 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 2289, 198 L.Ed.2d 723 (2017). The same problem could arise at this stage if the individual plaintiffs' claims are tried before the appeal of decertification is decided.

5. Plaintiffs also contend that, if the individual plaintiffs' claims are tried to verdict and the Seventh Circuit reinstates the class, a ruling on the merits by this Court may "deprive[] the defendants of the benefit of res judicata should they be sued by other members of the class." *Thomas v. City of Peoria*, 580 F.3d 633, 635 (7th Cir. 2009).

6. The parties agree that awaiting the decision of the Seventh Circuit on Plaintiffs' Rule 23(f) petition will be more efficient and avoid the waste of judicial resources: it will allow the Court and the parties to have certainty regarding the status of the case before engaging in the significant time and expense of preparing for trial, and it may allow for settlement before trial.

WHEREFORE, for the reasons stated herein, the parties respectfully request that the Court enter the attached proposed Order continuing the trial date and all pre-trial deadlines.

Respectfully submitted, this 19th day of January, 2018.

s/ Kerry A. Murphy

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic service notification system, this 19th day of January, 2018:

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